



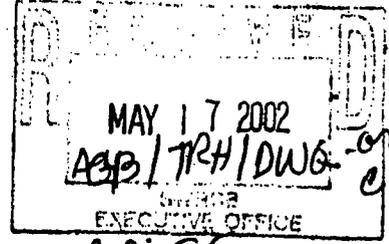
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

10.11



May 14, 2002

Mr. Arthur G. Baggett, Jr.
Chair
Ms. Celeste Cantu'
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Baggett and Ms. Cantu':

Thank you for the opportunity to review and comment on the draft Section 303(d) List Revision dated April 2002. The U.S. Environmental Protection Agency (EPA) has carefully reviewed the draft decision documents and would like to offer our comments. This letter provides general comments, enclosure 1 provides detailed cross-cutting comments, enclosure 2 provides detailed comments concerning individual fact sheets, and enclosure 3 provides detailed comments on other assessed waters and specific assessment approaches.

Strengths of Proposed Listing Report

We commend the State for implementing a much improved water quality assessment and listing process. The proposed approach of presenting water body fact sheets to explain the basis for each listing decision provides an effective means for documenting the basis for the State's assessment conclusions. We support the State's proposed approach of continuing past listings identified in the final 1998 Section 303(d) list unless new data or information provides an analytical basis for removing or modifying a listing. We appreciate the State's commitment to provide multiple opportunities for public participation in the listing process, including the data and information solicitation process and public comment and hearing process to invite feedback on the proposed list and priority rankings. Finally, we support the State's efforts to assess unconventional data and information types, including sediment, fish tissue, and recreational advisories, as part of the assessment process.

Issues To Be Addressed

We understand how difficult it has been to develop assessment and listing decisions in a timely manner without having the benefit of generally applicable listing decision criteria. We appreciate the State's commitment to develop a listing policy but understand it will not be completed in time to inform the 2002 listing decisions. We

understand that the State intends to document the basis for its listing decisions on a water-by-water basis— a workable if labor-intensive process. EPA supports the vast majority of the proposed listing decisions, including the decisions to continue listing previously listed waters and most of the decisions to add and/or remove waters from the 2002 list. However, although the list report provides the elements necessary to support an approvable list, the list is not approvable in its current form. Our review of the proposed listing decisions identified several significant issues of concern to be addressed to ensure that the final list submitted for EPA action can be approved. These issues are listed here and discussed further in the enclosures:

- **Documentation of the basis for listing decisions must be improved.** In some areas, the draft listing package provides insufficient information describing the data and information considered and the analytical and legal basis for conclusions that individual waters should or should not be listed. Additional details are necessary to describe how the State considered data and information quality and quantity and determined whether numeric and narrative water quality objectives were attained. Also, several listing decisions appear to be inconsistent with each other, and the final listing decisions must be made in a consistent manner or include rationales demonstrating that differences in listing assessment approaches and results are reasonable.
- **Waters impaired due to naturally occurring pollutant sources need to be listed.** The Report proposes not to list several waters which exceed applicable water quality standards. We understand the State is suggesting that the Basin Plans contain natural sources exclusions that would authorize the State to decide not to list an impaired water if the sources are found to be naturally occurring. The cited language from the Basin Plans does not appear to provide a natural sources exclusion. The State needs to provide a more substantial rationale for not listing these waters or include them on the 303(d) list.
- **The State must document how it considered and listed “threatened waters.”** It is not clear from the package whether and how the State considered listing waters which now meet standards but are expected to exceed standards in the near future. Federal regulations require the listing of threatened waters, and EPA’s 1997 and 2001 listing guidance documents describe how this requirement should be addressed.
- **The rationales for excluding many waters (including many waters on the “watch” list) from the Section 303(d) list must be explained.** The State must more clearly explain its decisions not to list under 303(d) many waters identified for inclusion on its monitoring “watch” list or otherwise excluded from the 303(d) list. Enclosures 2 and 3 identify many specific waters in these categories for which available data may be sufficient to support inclusion on the 303(d) list. Please provide a clearer explanation of how these waters were assessed and the State’s rationale for not including them on the 303(d) list.

- **Decisions not to list waters based on the presence of other control programs must be justified.** The State is proposing to exclude several impaired waters from the 303(d) list based on reliance on other required control programs. The State must describe how these other control programs will result in attainment of standards in a reasonable period of time, or list these waters if this description cannot be provided.
- **The basis for priority ranking and targeting decisions must be described.** The listing report contains no descriptions of how priority ranking and targeting decisions were made for specific water bodies. The final listing report must explain in more detail how these decisions were made.

Issues that Should Be Addressed to Strengthen Listing and Targeting Approach

The proposed listing decisions do not include schedules for developing TMDLs for all listed waters. EPA's 1997 national policy indicated that states are expected to establish and meet schedules for all listed waters and that these schedules generally should not exceed 8-13 years in length. This policy was reiterated in EPA's 2001 Integrated Report Guidance. We are concerned that the proposed 2002 listing decisions do not include schedules for developing TMDLs for all its listed waters. The State Board should adopt firm schedules for all listed waters in order to increase the level of accountability at the State Board level for TMDL program performance, and to provide a clearer indication to the public of when TMDLs will be legally adopted by the State. If the State does not set comprehensive TMDL schedules concurrent with its 303(d) listing decisions, we recommend the State to set these schedules soon after the listing decisions have been made. Meanwhile, we expect the targeting commitments to adopt TMDLs during the 2002-04 period to be met. The State should clarify that in targeting waters for TMDL completion in the next two years, the State means that the TMDLs will be adopted and submitted for EPA approval during this time period. Past State schedules which were set based on Regional Board hearing dates were misleading because they did not reflect the actual time needed to complete TMDL adoption and submission.

We also encourage the state to address the following issues to improve the listing decision and utility of the list as a planning document:

- Follow EPA's 2001 Integrated Report Guidance concerning assessment reporting categories for all waters, and associated scheduling of follow-up monitoring.
- Describe more clearly the basis for the State's proposal to carry over most listings from the 1998 Section 303(d) list absent new data and information. EPA supports this approach but believes it would improve the report to explain this approach in more detail.
- Coordinate with neighboring states with respect to assessments of waters which cross jurisdictional boundaries in order to improve the consistency of assessment judgements for these waters.

- Coordinate with the Fish and Wildlife Service, National Marine Fisheries Service, and State Department of Fish and Game to ensure that listing decisions address the need to protect listed species.

Conclusion

Although there are numerous issues to be addressed to ensure that the final list can be approved by EPA, we believe the listing proposals represent much progress by the State in terms of analytical effort and collaboration between the State and Regional Boards in the listing process. These improvements bode well for the future program. We look forward to working with you and your staff to identify workable approaches to addressing our comments as well as those of other commenters, within the time and resources available for the task. If you have questions concerning these comments, please contact me at (415) 972-3572 or refer your staff to David Smith at (415) 972-3416.

Sincerely,


Alexis Strauss
Director 14 May 2002
Water Division

Enclosures (3)

cc: Craig J. Wilson